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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,645	01/20/2004	Charles Joseph Kowalski	67895-40080	3336

7590 04/13/2006

McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102

EXAMINER

DEL SOLE, JOSEPH S

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/761,645	Applicant(s) KOWALSKI ET AL.	
	Examiner Joseph S. Del Sole	Art Unit 1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claim 11 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention; there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 3/6/06.
2. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Information Disclosure Statement

3. The information disclosure statement filed 10/10/04 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the fourth reference listed, 5,489,144, does not match up with its listed date and inventor. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Claim Objections

4. Claim 2 is objected to because of the following informalities: a) "a rotation signal an transmit" should be changed to --a rotation signal and transmit. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is vague and indefinite because "structural safety feature" is unclear.

Claim 1 is vague and indefinite because "operational safety feature" is unclear.

Claims 2 is vague and indefinite because it is unclear whether the "third sensor" of feature "e" is the same as the "third sensor" of feature "ii".

Claim 2 is vague and indefinite because the phrase "removal-resistant" is unclear and does not provide metes and bounds to the structure it is describing.

Claim 2 is vague and indefinite because it is unclear what constitutes a "first preselected time interval" in feature "iii".

Claim 2 is vague and indefinite because it is unclear what constitutes a "second preselected time interval" in feature "iv".

Claim 2 is vague and indefinite because it is unclear what constitutes a "machine fault" in feature "v".

Claim 2 is vague and indefinite because it is unclear what constitutes a "catastrophic electrical fault" in feature "vi".

Claim 4 constitutes an improper use of a Markush grouping and is vague and indefinite because it results in undue multiplicity. Claim 3 includes an embodiment having all the structural features and thus claim 4 does not further limit and is vague. See MPEP2173.05(h).

Claim 6 constitutes an improper use of a Markush grouping and is vague and indefinite because it results in undue multiplicity. Claim 5 includes an embodiment having all the operational features and thus claim 6 does not further limit and is vague. See MPEP2173.05(h).

Claim 8 constitutes an improper use of a Markush grouping and is vague and indefinite because it results in undue multiplicity. Claim 7 includes an embodiment having all the structural and operational features and thus claim 8 does not replicate claim 7 and is vague. See MPEP2173.05(h).

Claim 9 is vague and indefinite because parent claim 2 is a Markush claim and thus the third sensor is claimed in the alternative only, thus claim 9 does not necessarily limit claim 2. Claim 9 should be amended to positively recite the third sensor and also must correct the above rejection wherein two third sensors are claimed. See MPEP2173.05(h).

Claim 10 is vague and indefinite because parent claim 2 is a Markush claim and the third sensor is claimed in the alternative only, thus claim 10 does not necessarily limit claim 2. Claim 10 should be amended to positively recite the third sensor and also

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must correct the above rejection wherein two third sensors are claimed. See MPEP2173.05(h).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-3, 5, 7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP2001179149 in view of any of Horner et al (5,057,171), Amore et al (5,469,779) or Nishizawa et al (6,999,823).

The Examiner notes that Todokoro (6,722,869) is equivalent to JP2001179149 and the following rejection refers to portions of that text.

JP2001179149 teaches a cotton candy machine having a base (Fig 1) with a drive motor (Fig 18) and an upwardly extending fixed shaft (#23 or #9)), a primary power switch (#3), a power cord and a power plug (col 2, lines 15-30 and col 2, lines 15-20); a bowl engaging the base by securement means including a detent (Fig 17); a

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spinner (#8) enclosed within a stationary, insulating top cap (#7b) , the top cap held in place on the shaft by a lock nut (#9); a heater to supply heat (#19); the a machine having structural and operational features; a first sensor adapted to detect the proper installation of the top cap (col 4, lines 35-55); a second sensor adapted to detect proper installation of the bowl (col 4, lines 25-35); the lock nut having a removal-resistant first shape (#9, if it wasn't removal resistant it wouldn't stay firmly attached when necessary and col 7, lines 30-50); a first thermostat situated within the base and adapted to serve as a primary power interrupt if the bases reaches an overheat temperature (col 9, lines 5-20); and a fuse adapted to serve as a power interrupt.

JP2001179149 fails to explicitly teach a "time-base logic controller",
JP2001179149 does teach control of multiple machine functions.

Horner et al teaches logic controllers in the molding art for the purpose of controlling the mechanisms of a device (col 5. lines 10-23). Nishizawa et al teaches a logic controller for the purpose of assuring safety by controlling the molding device and enabling auto shut-off (col 3, lines 20-37). Amore et al teach logic controllers in the molding art for the purpose of controlling safety features (col 4, lines 5-10).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of JP2001179149 with logic controllers as taught by the three above secondary references as the mechanisms controlling the controls of JP2001179149 because such control is well known in the art.

References of Interest

10. Kennedy et al (5,542,835) teach the use of alarms; Miyahara et al (6,821,102) teach rotational control, but not such that it would be obvious to apply to the rotational movement of a cotton candy machine; Johnson (4,133,543) and Bedolan (5,332,240) teach the attachment of a removal tool to a power cord; and Weiss (4,872,821), Wallace et al (3,232,244) and Duncan (3,306,722) teach the state of the cotton candy/ fiberization art. Each are cited of interest to show the state of the art.

Allowable Subject Matter

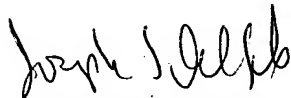
11. Claims 4, 6 and 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on M-F 8:30 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph S. Del Sole

4/11/06